

FINAL STATEMENT OF REASONS

UPDATE OF REGULATIONS OR INITIAL STATEMENT OF REASONS

Section 1896.99 DVBE Incentive Application Intent was removed after Office of Administrative Law determined it was not a regulation. Removal of this section does not change the intent for departments to increase their DVBE participation with the incentive or limit the ability of departmental directors to follow title 2, division 2, chapter 3, subchapter 10.5, section 1896.62(b).

ALTERNATIVES DETERMINATION

The Department of General Services (DGS) has determined that no alternative would be more effective in carrying out the purpose of the proposed regulations or would be as effective as and less burdensome to affected private persons than the proposed regulations.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE NOTICE PERIOD OF APRIL 4, 2007 THROUGH JUNE 1, 2007.

Section 1896.98. Definitions, Section 1896.99. Disabled Veteran Business Enterprise (DVBE) Incentive Application Intent, Section 1896.99.100 Incentive Application, Section 1896.99.120 Incentive Amount.

Following are summaries of the public comments, DGS responses, identification if revision is needed, and the regulation section(s) concerned (Public Comments: L = Letter, E = Email, S=Speaker). The middle number of the *comment number* represents an individual letter, Email, or speaker. Where comments are similar, there is an attempt to place them next to each other. There were six letters that came through the United States mail, seventy-three emails, and ten speakers:

#	Comment Number	Summary of Comment	Response	Revision Needed	Section/Area
1	E-01-01	This owner supports the proposal since his business received solicitations from prime contractors to which he responded, but he never heard from them again. He thinks this regulation will keep primes honest.	Agree. The incentive will provide a potential gain for the primes that should encourage more use of DVBE subcontractors.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
	E-01-02	This business was told the State can only buy furniture from Prison Industry Authority.	Reject: Out of scope (DGS responded to the firm separately).	No	None
3	E-01-03	This owner suggests piggy-backing off the General Services Administration (GSA) schedule.	Reject: Out of scope (DGS responded to the firm separately).	No	None
4	E-02-01	This small business has solicited DVBEs for public works projects with no luck. The DVBE incentive is a burden to this business as they do not generate more than \$500,000 in annual sales. DVBEs with a license, insurance, and bonds bid on their own.	Disagree: At this level of annual sales, this small business' future may be in subcontracting with a larger firm as a small business, or in bidding when the Government Code Sections 14838.5 or 14838.7 are applied. These codes allow competition where only small businesses or only DVBEs are recruited for contracts between \$5,000 and \$100,000 or between \$5,000 and \$131,000 for construction contracts.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
5	E-03-01	This president of a sign language interpreter is against the proposal if it causes more trouble and paperwork. Although believing in working with DVBEs, this person	Disagree: Senate Bill (SB) 115 requires a DVBE incentive and DGS has determined that the proposal will work to increase DVBE participation. This proposal should increase the value of	No	1896.99/incentive intent, 1896.99.100/ Incentive application &

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		does not want red tape or government requirements.	using DVBEs with minimal additional paperwork.		1896.99.120 incentive amount.
6	E-04-01	This business states that the proposal allows departments to fail to meet the DVBE goal for two years in a row and not offer the DVBE incentive.	Disagree: In the three previous years, the department must have met the goal in two years to be exempt. Therefore, they would not be exempt if they missed it two years in a row.	No	1896.99.100/ incentive application
7	E-04-02	This business disagrees with rewarding departments by not having to meet the DVBE goal if they have met it in the previous three years.	Disagree: The department is not exempted from meeting the 3 percent goal. It just does not need to meet it using the DVBE incentive.	No	1896.99.100/ incentive application
8	E-04-03	This business recommends a change to the proposed regulation to allow departments that have met the goal for the previous two years to exempt solicitations from the DVBE incentive.	Disagree: With an influx of bond monies, the department's ability to attract enough DVBEs to do the job on an on-going basis may not be possible. A department may have a good process that is not successful for one year because of its uneven demand for services or commodities.	No	1896.99.100/ incentive application
9	E-05-01	This owner of two businesses, a painting service and a janitorial service, has had no luck in obtaining contracts as a prime or subcontractor. He supports the incentive in hopes of having a better chance to compete successfully.	Agree	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
10	E-06-01	This business president very	Disagree: For a business to be certified	No	1896.99/incentive

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		strongly opposes the proposed regulation. He finds that most DVBE companies are nothing but <i>fronts</i> ; some claiming to sell everything.	as a DVBE, it must provide a commercially useful function (CUF) in at least one area. For each contract, the buyer is to determine that the bidder performs a CUF for that contract.		intent, 1896.99.100/ incentive application.
11	L-01-04	This contractors' association is concerned that this "preference" program could exacerbate the problem of false fronts.	Disagree: Same issue and response as #10.	No	Same as E-06-01
12	E-07-01	This real estate appraiser is interested in anything that may help the DVBE program.	Agree	No	1896.99/incentive intent.
13	E-07-02	This real estate appraiser requests a formal investigation on RFP 500-07-01 for the department's handling of the bid and its requirement of membership in the Appraisal Institute.	Reject: Out-of-scope (DGS responded to individual separately).	No	None
14	E-08-01	This DVBE business is concerned about the long implementation of SB 115 and if it will deploy throughout California.	Disagree: The regulations are in the final stages of the review process. They will apply statewide once they are adopted.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
15	E-09-01	This DVBE alliance states the maximum incentive amount for bids meeting the minimum goal should be 10 percent. The	Disagree: The costs of the DVBE incentive are to be absorbed by the department providing the DVBE incentive. Ten percent incentive could	No	1896.99.120/ incentive amount.

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		maximum caps can effectively control against excessive incentive awards.	exceed the capacity of many departments to fund. Five percent should be adequate to make a difference. Caps do assist with excessive awards. However, caps were designed to provide flexibility to the departments. Since the choice of no cap may be made, a 10 percent incentive could remove this incentive from its low cost roots in the SB 115 legislation.		
16	E-75-04	This DVBE wants the maximum incentive amount for evaluation purposes to be 10 percent. He states that the incentive must be in addition to the 5 percent preference for small business. He states that caps can control costs.	Disagree: Same response as #15.	No	Same as E-09-01.
17	E-09-02	This DVBE alliance states that a DVBE prime bidder should be allotted a greater incentive than a non-DVBE prime who meets the minimum 3 percent DVBE participation.	Agree and Disagree: Agree that an incentive scale is allowed under the proposed regulation as an option in which bidders obtaining higher levels of participation qualify for greater incentive within the constraints of the solicitation. Disagree that it should be mandatory.	No	1896.99.100/ incentive application and 1896.99.120/ incentive amount.
18	E-75-05	This DVBE also states that DVBE prime bidders should receive a greater incentive than non-DVBEs who meet the minimum 3 percent.	Agree and Disagree: Same response as #17	No	1896.99.100/ incentive application.

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19	E-10-04	This contractors' association states that the incentive program creates a situation in which the low, responsible bidder on public projects may not be awarded the contract.	Agree: The incentive can adjust who gets the contract. It is the intent of this incentive to change who receives the contracts to gain more responsive, responsible certified DVBE participation in State contracting. Response same as #17	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
20	L-02-01	This legislative advocate for a construction employers' association opposes the DVBE incentive proposal. One reason he provides is it distorts the lowest responsible bidder requirement.	Agree: Same response #19	No	1896.99.100/ incentive application & 1896.99.120/ incentive amount.
21	S-04-02	This vice president of an association of general contractors states he is concerned that sometimes the second lowest bidder will get the job.	Agree: Same response as #19	No	Same as E-10-04
22	S-06-01	This general manager of a engineering contractor for primarily public works projects believes that altering the low bid process by imposing incentives is unfair, unreasonable, and will not necessarily further the cause of the DVBE effort. He wants to use subcontractors the firm has experience with to lower the risk. If the risk is higher, they will put	Same responses as #19 and #70	No	Same as E-10-04

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		more cost in their bids. Also he says it would strain relationships with their current subs if the subs were the lowest bidder for them and they chose the DVBE.			
23	E-09-03	This DVBE alliance opposes allowing executive officers to exempt contracts from the DVBE incentive if the departments have met or exceeded the 3 percent goal in two of the three previous years.	Disagree: The highest ranking executive officer is held accountable for achieving the legislated goal of 3 percent DVBE participation. The proposed regulations allow flexibility to the highest ranking executive officer of departments, which have met the 3 percent DVBE goal in two of the three previous years, to exempt <i>a specific solicitation or contract</i> from the incentive, but still include the DVBE participation requirement. The existing regulations [2 CCR Section 1896.62(b)] allow the highest ranking executive officer to also set a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project, or contract as long as the overall goal of 3 percent is satisfied as defined by Public Contract Code Section 10115(c). Additionally, California State Contracting Manual, Volume 2, Section 3.3.1 gives a department director or his designee the	No	1896.99.100/ incentive application

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			discretion to waive inclusion of DVBE participation on individual solicitations.		
24	E-75-06	This DVBE opposes allowing the executive officer to exempt contracts if they have met goal in two of the past three years.	Disagree: Same response as #23	No	1896.99.100/ incentive application.
25	L-01-01	This contractors' association states that the cost of each contract could easily be \$100,000 more.	Disagree: This proposal has flexibility. The costs of the DVBE incentive are to be absorbed by the department providing the DVBE incentive. Additionally, same response as #23.	No	1896.99.100/ incentive application & 1896.99.120/ incentive amount.
26	E-67-02	This engineering and utility contractors' association states that the quantity and availability of certified DVBEs in the heavy construction business is extremely low.	Disagree: If this situation exists, it does not create a problem for this proposed regulation. The proposed incentive still allows the flexibility to exempt a specific solicitation, or contract from the participation requirement and the incentive should the department deem it appropriate. Same response as #23 concerning flexibilities. Additionally same response as #30 (on a following page) for number of DVBE certified firms.	No	1896.99.100/ incentive application & 1896.99.120/ incentive amount.
27	S-02-01	This DVBE alliance representative read the letter sent by the alliance president, numbers 15, 17, and 23.	Same responses as in numbers 15, 17, and 23.	No	Same as E-09-01, E-09-02, and E- 09-03
28	S-02-02	This DVBE alliance representative wants DGS to look past	Agree	No	1896.99/incentive intent,

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		information on the proposed regulation that will be provided in the public hearing such as huge cost ramifications to the State, lack of flexibility in contracting procedures, and not enough DVBEs available. He feels in some cases these comments are reckless rhetoric. He states that the regulations are clear, clean, and meet the intent of the legislation unanimously passed almost two years ago. He encourages DGS to move these regulations forward.			1896.99.100/ incentive application & 1896.99.120/ incentive amount.
29	E-10-01	This contractors' association opposes the proposal. It states that the proposal mandates 3 percent of all public construction work in California be awarded to DVBE firms.	Disagree: The DVBE incentive will only apply to State of California contracts. The association's numbers include all public construction in California, including federally-funded contracts, local government, etc.	No	1896.99.100/ incentive application
30	E-10-02	This contractors' association opposes the proposal for a second reason: only 200 certified DVBE firms are listed on the DGS website.	Disagree: As of June 1, 2007 close of business, the DGS has 930 DVBEs, including 250 construction firms and an additional 680 firms to provide goods and services. The pool is large enough that this DVBE incentive will add an incentive to use DVBEs. However, if there are no DVBEs competing or	No	1896.99.100/ incentive application.

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			proposed as a subcontractor or supplier, there will be no incentive applied.		
31	E-33-02	This legislative advocate states that there are a total of 200 DVBE firms (including janitorial) and 65 separate contractor license classifications. He states there are simply not enough qualified DVBE firms in the State to make any impact.	Disagree: Same responses as #30	No	Same as #30
32	E-70-01	This DVBE and associate member of an association of general contractors provided a copy of his response to the opposition email to the SB 115 proposed regulation. He clarifies that there were 3,648 certified DVBEs on his last count. He culled a list of ones that could be used by construction.	Disagree: Same response as #30	No	None
33	S-04-01	This vice president of an association of general contractors states he has DVBE members and is supportive of their being hired. He is concerned that there are not enough DVBEs (253 certified contractors) to do 1 to 3 percent of \$25 billion worth of work. He wants to work with the DVBE	Disagree: Same response as #30	No	Same as #30

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		alliance to come up with something.			
34	S-05-01	This legislative advocate states that the number of DVBE construction firms is about 253 and there are over 65 licensed classifications in the State with the Contractors License Board. The pool is not large enough. The challenge is to get DVBEs trained.	Agree and disagree: Same response as #30	No	Same as #30
35	E-72	This association that encouraged the form email, E-16, et.al. responded to E-70s clarification of number of certified construction DVBE firms listed on the DGS website on May 31, 2007. He found 253 and made the correction on the alert to members.	Agree: Same response as #30	No	None
36	S-08-01	This representative of a general contractors' association DVBE workforce shortage is real. The type of work requires expertise.	Disagree: Same response as #30	No	Same as #30
37	E-10-03	This contractors' association states that the market is way beyond the capacity of the DVBE firms. Therefore, in the past <i>brokers</i> have resulted.	Disagree: <i>Brokers</i> are not allowed to use DVBE certification unless brokering is already a part of the industry in which it is being offered. The DGS has the authority to monitor for DVBE program abuse and will continue to do so for all contracts in accordance with Military	No	1896.99.100/ incentive application & 1896.99.120/ incentive amount.

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			and Veterans Code Section 999.9 and Public Contract Code Section 10115.10.		
38	S-06-02	Brokers charge a premium for services.	Disagree: Same response as #37	No	Same as #37
39	E-67-04	This engineering and utility contractors' association states that the incentive program may lead to alliances being formed between general contractors and a DVBE that would only provide quotes to that general contractor creating a disadvantage to other bidders.	Agree: General contractors may continually use the same DVBE to subcontract work. This would increase DVBE participation. If the association means the DVBE would be a broker, a broker will not be accepted. Response for this issue is the same as #10 and #37.	No	None
40	L-02-03	This legislative advocate for a construction employers' association expresses concern that unscrupulous companies will create phony enterprises to take advantage of the bid preference and hire non-DVBEs to perform the work.	Disagree: Same as #10 and #37.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
41	E-10-05	This contractors' association offers to work to create another system. They state that their organization and others have not been included in meetings on this incentive.	Disagree: This main association and many others affected have been included in meetings; they have also been offered a chance to submit their ideas. They also have this public comment period to offer alternatives.	No	1896.99/incentive intent.
42	S-07-01	This representative of a construction firm opposes bid preferences. He is concerned with	Disagree: Same responses as #37, #19, and these cost estimates don't relate to this proposal. Refer to the cost	No	1896.99/incentive intent

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		<i>pass-throughs</i> and makes estimates of the cost of the program based on \$24 billion spent, 5 and 10 percent preferences, and 250 firms.	estimate in the Financial Estimate for the DVBE incentive.		
43	E-11-01	This firm president wants to eliminate <i>good faith effort</i> .	Reject: Out of scope (DGS responded to firm separately).	No	None
44	L-01-02	This contractors' association states that the proposed "preference" program distorts the lowest bid system and will cost up to 5% more money.	Disagree: Other social programs adjust the lowest bidder methodology, so adjustments are part of the contracting methodology, not a distortion. Although the cost could be up to 5 percent more on an individual solicitation, the lowest bidder could be the DVBE, or the DVBE may be much closer in cost so that the incentive does not cost the maximum amount. Further, the caps of \$100,000 for the incentive or \$100,000 for all incentives and preferences may be applied, a lower incentive used, or if goal has been met two of the three prior years, a solicitation may be exempted from DVBE incentive by the department's executive officer.	No	1896.99/incentive intent, 1896.99.100/incentive application & 1896.99.120/incentive amount.
45	L-01-03	This contractors' association states that the bond package for improving the State's infrastructure system has been guarded against additional costs. This proposal will	Agree: The proposed regulation may increase costs somewhat, but the departmental directors have flexibility to make the costs absorbable. Flexibility includes	No	1896.99/incentive intent, 1896.99.100/incentive application &

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		increase the cost per project.	<ul style="list-style-type: none"> • Two ways to place caps on the incentive • The ability to select amount of incentive between 1 and 5 percent based on need to meet the DVBE participation goal of 3 percent • A scale where greater DVBE participation receives greater incentive between 1 and 5 percent • The ability to exempt contacts from an incentive if the department had met the DVBE goal in two of the last three years • The flexibilities already part of the DVBE program. The existing regulation (CCR Section 1896.62(b)) allows the highest ranking executive officer to set a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project, or contract as long as the overall goal of 3 percent is satisfied as defined by PCC Section 10115(c). 		1896.99.120/ incentive amount.

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46	L-02-02	This legislative advocate for a construction employers' association believes the cost to the State to be in the millions of dollars. He states that the proposed regulations run counter to California voters' expectations for use of bond monies to improve our infrastructure.	Disagree: Response same as #25 and #45	No	1896.99.100/ incentive application & 1896.99.120/ incentive amount.
47	L-01-05	This contractors' association finds difficulty in locating certified businesses and wants the database of DVBE contractors to be more accessible and user friendly.	Disagree: Although related to scope, it is a side issue that will be improved through training or change if possible. Personal assistance is available Monday through Friday, 8 am to 5 pm at (916) 375-4940 (the Office of Small Business and DVBE Services).	No	None
48	L-02-04	This legislative advocate for a construction employers association wants DGS to create a more user-friendly database to locate DVBEs	Disagree: Response same as #47	No	None
49	L-01-06	This contractors association recommends the first two progress payments for a project to be increased to 150% of the original payment for those who were able to achieve the 3% DVBE goal.	Disagree: SB 115 requires a uniform process for state contracting. There is no statutory authority in most cases to make advance payments. Implementing this proposal could not be uniform application of the DVBE incentive as the majority of state contracts are awarded without progress payments.	No	1896.99/incentive intent.

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50	S-06-04	This general manager of an engineering contractor offers an alternative to streamline DVBE certification and provide accelerated payments to contractors.	Agree: Same response as #58. Disagree: Same response as #49.	No	1896.99/incentive intent
51	E-12	This DVBE environmental, health, and safety (EH&S) consulting company that also conducts construction project management has offered its services over 100 times as a sub to primes and has only received one contract for \$5,000. He states that the current system focuses on <i>good faith effort</i> , has no penalty for non-compliance, and provides no incentives for hiring DVBEs. He says he receives soliciting proposals on projects totally unrelated to engineering or EH&S and training. He further says that general contractors tell him they do not need to waste time hiring a DVBE; they can simply claim <i>good faith effort</i> to win the project. There is no penalty for not achieving the 3 percent goal. His conclusion is that the State does	Disagree: This appears to be an alternate suggestion that the State enforce the 3 percent goal. There is flexibility for meeting this goal. Certain methods of enforcing contracts are available to State buyers and others are available to the Office of Small Business and DVBE Services when potential program fraud is alleged. This incentive proposal is another way to create an incentive for using DVBEs. It will be in addition to other efforts to improve the <i>good faith effort</i> which is not the process described in this email. It is anticipated that the incentive will promote a true effort to find and use DVBEs.	No	1896.99/incentive intent.

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		not achieve its 3 percent goal because it does not enforce participation on bids.			
52	S-01	This DVBE environmental, health, and safety (EH&S) consulting company presented the substantially the same information he provided through his email: E-12	Disagree: Same response as #51	No	Same as #51
53	E-75-02	This DVBE states that the State should enforce the established goals.	Agree: Same response as #51	No	Same as #51
54 .1 thr ou gh 54 .4 8	E-13 through E-32, E-33-01, and E-36, E-44 through E-66, E-68, E-72, E-78 Note: Duplicates E-37 through E-43 were removed	We received 40 emails (plus 3-4 copies of each) from different construction firms. All were the same form email. The form email says that the firm supports opportunities for certified DVBE firms, but opposes this proposal. It states that the proposal will mandate 3 percent of all public construction work in California be awarded to certified DVBE firms. It says further, <i>This is unrealistic, will create an unlevel playing field for legitimate DVBE firms, will compromise the current lowest responsible bidder process, and could cost the state \$100,000</i>	Disagree: Same responses as the responses for numbers 4, 19, 29, 30, and 37.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.

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		<i>more per project.</i> It offers the opportunity to discuss other options.			
55	S-08-03	This representative of a general contractors' association wants to use the CalTrans model of outreach. He says that CalTrans actively help contractors per location seek qualified DVBEs. They assist DVBEs to become certified. The goal should be by department, not project.	Agree: This proposal does not exclude the CalTrans outreach model and in fact the State program suggests such efforts. Also goals are by department. However, this incentive is in addition to those efforts that have not succeeded to achieve the 3 percent DVBE participation goal. Section 1896.100 (a) allows departments that have met or exceeded the DVBE goal of 3 percent in two of the last three years to exempt contracts from the DVBE incentive.	No	1896.99/incentive intent, 1896.99.100/ incentive application
56	E-33-03	This legislative advocate suggests for immediate results that the DGS adopt the CalTrans DVBE program, and work with the construction industry for the long term, hopefully using the CalTrans program methods.	Agree: See summary of comment and same response as #55		Same as #55
57	S-05-01	This legislative advocate states in the short haul the CalTrans model works very well.	Same response as #55	No	Same as #55
58	E-67-01	This engineering and utility contractors' association suggests that streamlining the DVBE certification process is a key	Agree: The online process introduced in January of 2007 enables all DVBEs to apply via the Internet and submit the required support documents via the	No	None

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		component to increasing certified DVBE	mail. DVBE applications are given a priority and processed quickly by the OSDS.		
59	E-67-03	This engineering and utility contractors' association states that the <i>good faith effort</i> costs money and absorbs resources. Further they strongly feel that concerns with the current process be addressed prior to implementing an incentive program to ensure that costs this program incurs are actually benefiting.	Disagree: The legislature passed SB 115 without eliminating the code requiring <i>good faith effort</i> . If the identified DVBE participation goal is met <i>good faith effort</i> documentation is not needed. The subcontracting with DVBEs is the goal of both the <i>good faith effort</i> and the incentive.	No	None
60	E-69-01	This certified small business and certified DVBE firm wants the purchasing of the State leveled by changing the word <i>may</i> utilize to <i>shall</i> utilize. He questions what happens if the agency does not meet its DVBE goal in at least two of the last three years.	Disagree: When there is a DVBE requirement and the agency has not met its goal in at least two of the last three years, the minimum of a 1 percent DVBE incentive <i>is required</i> and <i>shall</i> be used.		1896.99.100/ incentive application & 1896.99.120/ incentive amount.
61	E-69-02	This certified small business and certified DVBE firm states this incentive will not cost the State any money and potentially enhance state revenue as it will keep individuals off unemployment, welfare, and MediCal.	Disagree and Agree: It may initially cost some money as those DVBEs and primes with at least 3 percent DVBE participation may win a contract that they would not have won without the incentive. This contract may cost the same or up to 1 percent more from mandatory requirements or up to 5	No	1896.99.120/ incentive amount.

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			percent more if that amount of incentive is necessary to meet the DVBE 3 percent goal. However, it is agreed that a positive effect of hiring more DVBEs may be more State income tax from these DVBEs and less use of unemployment, and other programs.		
62	E-70-02	This DVBE and associate member of an association of general contractors says he agrees that SB 115 incentive might have a very positive impact on the certified DVBEs in the public works areas.	Agree: The goal is to have this positive effect on use of DVBEs in State service	No	1896.99/incentive intent
63	E-71-01	This 10-year certified DVBE supports the incentive to encourage agencies to improve their practices to meet the DVBE goal. He sites the difference between California State Teacher's Retirement System (CalSTRS) and Public Employee's Retirement System (CalPERS) in meeting goal although the functions are nearly identical.	Agree: The DVBE incentive provides an additional tool to assist all State agencies to reach their DVBE participation goal.	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
64	E-71-02	This certified DVBE offers a suggestion to improve the DVBE program. His suggestion is to email any DVBE mentioned as a possible subcontractor-participant	Reject: Out-of-scope	No	None

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		in all bidders' responses to RFPs and to post the same announcement on the DGS Contracts Register webpage.			
65	E-74	This 12-year certified DVBE supports the DVBE incentive proposal. He states that <i>good faith effort</i> is not working. His personal example is four or five times a week he receives calls asking if he is going to bid on a project, usually a bridge or school. His reply is if they are placing a dental chair or X-Ray machine on the bridge, he could bid. He says that most of the time the individual knows nothing of the project and is just given the list to call. Some companies sell <i>good faith efforts</i> ; they publish an ad, write letters to DVBEs and make a few calls.	Agree: The DVBE incentive provides an additional tool to assist all State agencies to reach their DVBE participation goal.	No	1896.99.100/ incentive application
66	E-75-01	This DVBE states the California State program should continue to provide strong incentives and implement set-aside provisions for DVBE participation that match or exceed those set by the federal government.	Agree: There is a need for an incentive. Reject: Out of scope. Set aside programs that make a certain amount of the business for DVBEs only are not part of SB 115 legislation. It is an incentive program only.	No	1896.99/incentive intent
67	E-75-03	This DVBE wants to maintain the	Reject: Out of scope.	No	None

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		small business mandates.			
68	E-76-01	This construction firm suggests an incentive bonus to the contractor after the performance has been achieved similar to the bonus earned by CC Myer for expedited completion of the Bay Area bridge project. Left over bonus pool money could fund a DVBE development organization as a funding source for education and training of DVBE small businesses.	Disagree: The current proposed regulation should cost the State considerably less than the proposed incentive bonus to the contractor. Under the proposed regulation if the lowest bidder has the required DVBE participation, he would be successful at no additional cost to the State. If the cost is more, but not the full amount of the incentive, once again the State has the full benefit for a lesser cost. Additionally if the department decides to only recruit DVBEs pursuant to GC Sections 14838.5 or 14838.7, the goal is furthered with no additional cost. The <i>after the fact</i> bonus would spread the monies over more contracts and either cost more or be less effective as it would be spread too thin. Training is encouraged, but not an incentive program as passed in SB 115.	No	1896.99/incentive intent
69	S-07-03	This representative of a construction firm suggests incentives be on the final percentage of DVBE participation employed and then many contractors would build DVBE participation in at the beginning.	Disagree: Same response as #68	No	Same as #68

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70	E-77-01	This DVBE and principal for a painters' association believes that general contractors seek, but do not have enough personnel dedicated to negotiate and subcontract with DVBEs. He has also not found assistance from senior estimators or the Association of General Contractors of which he is a member. His suggestion is to have the general contractor negotiate with successful subcontractors to give 3 percent of their bid to the DVBE.	Disagree/Agree: The State does not mandate the internal business practices of private firms. However, general contractors are encouraged to negotiate with subcontractors to obtain tier-two and tier-three DVBE participation. Such DVBE participation should be reported in all bids with the State.	No	1896.99/incentive intent
71	E-79	This firm president after viewing the hearing urges implementation of the DVBE Incentive Regulation. He finds fault with the argument that firms cannot find DVBEs willing to work in certain areas or certain contracts. He states that if there were no DVBEs willing to work, then no one would receive the incentive.	Agree	No	1896.99/incentive intent, 1896.99.100/ incentive application & 1896.99.120/ incentive amount.
72	E-80	This consulting firm spokesperson vigorously supports the proposed regulations. He believes that California as a leader in nationwide DVBE contracting should increase	Agree	No	1896.99/incentive intent

#	Comment Number	Summary of Comment	Response	Revision Needed	Section/Area
		its use of DVBEs so as to <i>return to the people of California the employment, the tax revenue and expanding opportunity they rightfully deserve for their leadership.</i>			
73	L-03-01	This DVBE supports the proposal because he sees <i>good faith effort</i> as a failure. He sees SB 115 as an answer since <i>the prime contractors will not be forced to do anything if they do not want to hire a Disabled Vet. On the other hand if they do want to give a Disabled Vet a chance in completing they would be rewarded for this effort.</i>	Agree: This proposal is to add an incentive for primes to use DVBEs as well as an incentive for DVBEs to perform work as the prime for the State.	No	1896.99/incentive intent
74	L-03-02	This DVBE states that displacing a small number of small businesses who did not serve is a small price to pay for the veterans' services.	Agree and Disagree: If a small business is directly competing in a bid and is the low bidder, this proposal does not displace the small business with anything other than another small business. However, if the DVBE is both a certified DVBE firm and a certified small business, it can displace a small business that has not identified the required amount of DVBE participation. This is a natural consequence of the legislative intent to hire more DVBEs.	No	1896.99/incentive intent, 1896.99.100/ incentive application.
75	L-04-01	This firm opposes the DVBE	Disagree: The 1 to 5 percent is a	No	1896.99.120/

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		incentive regulation. They state that it will allow a 1 to 5 percent cost increase in the cost of each project.	maximum amount of difference. If the bids are closer the cost is less.		incentive amount.
76	L-04-02	This firm states that \$100,000 difference can have a major effect on the outcome of a bid. It states that the construction industry has relied on the lowest responsible bidder concept.	Agree and disagree: \$100,000 can make a difference and that is the intent of the DVBE incentive to gain more DVBE participation. The lowest responsible bidder methodology is modified in State contracting by other programs such as small business preference, Local Agency Military Base Recovery Act, Target Area Contract Preference Act, Enterprise Zone Act, and recycled content preference.	No	1896.99.120/ incentive amount.
77	L-04-03	This firm states that although they have aggressively attempted to meet the 3 percent DVBE goals, they have not been consistently able to do so.	Disagree: We do not disagree with the statement. However, it should not affect the proposed regulation. If no one finds DVBE participation, no incentive is applied. The DVBE incentive is only provided when a responsible and responsive DVBE or responsible and responsive contractor with the required DVBE participation participate.	No	None
78	L-04-04	This firm states that the passage of the bond construction package will create need for more subcontractors and plenty of work should be available. The	Agree: Alerting DVBEs to public works opportunities is a good advocate role. Bids are advertised in the California State Contract Register. Some departments, including DGS, hold fairs	No	None

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		department should educate and alert all DVBEs of public works opportunities and make sure the contractors are able to find DVBEs	to unite primes and subcontractors. The DGS website also provides access to subcontractors by DVBE status, industry codes, and key words.		
79	L-05-01	This department commissioner finds the proposed rulemaking will have no effect fiscally and minimal effect on the business practices of the California Highway Patrol. It is similar to the small business incentive and implementation, therefore should be minimal.	Agree	No	None
80	L-05-02	This department commissioner supports the exemption for agencies that have met or exceeded goal two of the previous three years. He states it would be an incentive for state agencies to develop strong DVBE relationships.	Agree	No	1896.99.100/ incentive application
81	L-05-03	This department commissioner wants clarification on if and/or when a DVBE can displace a small business.	2 CCR Section 1896.100 (c) states <i>application of the incentive shall not displace an award to a small business with a non-small business</i> . This means the DVBE incentive only allows a DVBE to displace a small business if it is also a small business.	No	1896.99.100/ incentive application
82	L-05-04	This department commissioner wants clarification that <i>once</i>	2 CCR Section 1896.100 (a) states, <i>The 3 most current published DGS annual</i>	No	1896.99.100/ incentive

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		<i>agencies have met their participation goal how long they can exempt contracts from DVBE incentives.</i>	<i>reports are used to document a department's DVBE participation goal. When the new annual report is published, each department will need to verify if it continues to meet the requirement to be able to exempt contracts from the incentive. Additionally, mid-year reports are due to the DGS on February 1st of each year. Departments will be able to determine if they meet the requirement to exempt contracts using the current amount and application of incentive. At that time, they can, if necessary, make policy changes that may affect whether they meet goal before the final report and the new three years of published reports.</i>		application
83	L-06-01	This DVBE firm states there is a lack of effective evaluation of <i>good faith efforts</i> by awarding departments. He states there should be consequences if an audit reveals a pattern of inconsistencies when bidders submit <i>good faith efforts</i> .	Agree: If bidders do not properly use the <i>good faith effort</i> , they can lose the contract. This is managed by the individual buyers. Additionally, awarding departments are required to investigate allegations of DVBE program violations and prepare a written report to the OSDS in accordance with 2 CCR Section 1896.80.	No	None
84	L-06-02	This DVBE firm recommends elimination of the <i>good faith effort</i>	Reject: Elimination of <i>good faith effort</i> is out of scope.	No	None

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		exception.			
85	L-06-03	This DVBE recommends a firm requirement that all state contracts must have DVBE and small business participation.	Disagree: All state contracts are not suitable for required DVBE participation and small business participation. Additionally, this requirement would be contrary to existing laws and regulations.	No	1896.99.100/ incentive application
86	S-10-01	This president of an information technology consulting firm established his disabled veteran, certification, educational, and credentialed status and read the letter (L-06) he sent for his public comment.	Agree and disagree: Same responses as numbers 83, 84, and 85.	No	Same as #85
87	S-03-01	<p>This representative of a company that performs outreach for construction contractors states there are a number of reasons why DVBE may not be found:</p> <ul style="list-style-type: none"> • Many areas in the State do not have DVBEs that can participate on contracts, especially CalTrans contracts • Many firms cannot perform specialized CalTrans work • A primary problem is nonunion DVBEs cannot 	Reject: Out of scope. The incentive regulation only provides an incentive where DVBEs participate.	No	None

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		<p>participate as contractors on projects unless they perform nonunion work, such as environmental compliance.</p> <p>He states where there is a DVBE requirement, there should be an availability study of DVBEs. He also read a general contractor letter that is frustrated with the DVBE requirement since they have a hard time finding DVBEs and when they do the DVBEs cost more. He wants a regulation so nonunion DVBEs can participate.</p>			
88	S-03-02	<p>This representative of a company that performs outreach for construction contractors recommends the State pay union dues for DVBEs and encourage or require unions to sign one-time union agreements to allow DVBEs to participate.</p>	<p>Disagree: This recommendation goes beyond the authority of the DGS to create a uniform process for State contracting to provide a DVBE incentive to bidders.</p>	No	1896.99.100/ incentive application
89	S-06-03	<p>This general manager of a engineering contractor offers an alternative to require agencies to really target some bid opportunities to DVBEs</p>	<p>Disagree: Current law does not allow the DGS to require State agencies to target some bid opportunities to DVBEs. However, DGS encourages the use of GC Sections 14838.5 and 14838.7. These sections allow State departments to contract only with DVBEs or only with</p>		

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			small businesses for public works contracts between \$5,000 and \$131,000, and for all other contracts between \$5,000 and \$100,000. State departments must report the number of contracts and the total dollars awarded using this option annually beginning with the fiscal year 2006-07 report.		
90	S-07-02	This representative of a construction firm believes in the CalTrans model for good faith effort. He states the goal should be by department, not by project.	Agree: Same response as #55	No	Same as #55
91	S-07-04	This representative of a construction firm suggests the State dollars should be put into recruiting DVBEs into the business, training, and support.	Reject: Out of scope; SB 115 mandates an incentive program, not a training one. Recruitment is already part of the State DVBE advocate program.	No	None
92	S-08-02	This representative of a general contractors' association does not want departments that have met goals to be penalized.	Agree: Section 1869.99.100 (a) allows departments that have met or surpassed the 3 percent goal in two of the last three years to exempt solicitations from the DVBE incentive.	No	1896.99.100/ incentive application
93	S-09-01	This owner of an electric company states that he is a DVBE and the past speakers of the public hearing were just providing rhetoric to keep the hundred million dollars. He describes bid invitations for	Agree	No	1896.99/incentive intent

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		\$100,000 given to his company the day before they were due and providing his DVBE certification to contractors who used it and then employed other subcontractors as frustrating. He has also seen <i>pass-through</i> situations. He sees the DVBE incentive as an answer to dilemma. There may not be enough DVBE contractors to satisfy the required goal, but those diligent in seeking DVBEs will succeed. He supports the DVBE incentive.			
94	S-09-02	This owner of an electric company and DVBE states that the DVBE construction contractors need assistance more than those in the commodities or information technology. Those are sophisticated fields and not where most of the soldiers go.	Agree: SB 115 is meant to be a uniform process.	No	1896.99.100/ incentive application
95	S-09-03	This small business owner of an electric company and DVBE states that replacing a small number of small businesses whose owner did not serve is a small price to pay for the DVBEs sacrifice.	Agree: A lowest responsive, responsible small business bidder can only be replaced by a DVBE that is also a small business.	No	1896.99.100/ incentive application
96	S-10-02	This president of an information	Agree: These comments support the	No	1896.99/incentive

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		<p>technology consulting firm identifies the step of re-advertising if DVBEs aren't found at first. He described contracts where he has been a partner and says that where primes want to use DVBEs, they can. He answered some of the issues presented in the hearing:</p> <ul style="list-style-type: none"> • Construction industry can't find DVBEs: that's because to stay certified the DVBEs need to get work from it and they don't because the good old boy network is in place. • Increase costs: it costs firms because they are not making a genuine effort to work with DVBEs • Pass through: he calls finding products being in business • Location: Where there is enough money, he would go • Not having special skills: <i>If we can't drill 2,000 foot holes, we could provide drill bits.</i> 	<p>incentive proposal. The State does not approve use of the DVBE when it is used as a pass-through or <i>broker</i> unless this function is normal in the industry. The rest of this DVBE president's comments stand on their own.</p>		<p>intent, 1896.99.100/ incentive application, & 1896.99.120/ incentive amount.</p>

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		He provided a story at Lockheed Missiles where Lockheed engineers fabricated a part and provided it to a small business so it could continue to manufacture a part for a missile. He ended with, <i>I know that if you want to do it, you can do it.</i>			

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